

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSE QUEVEDO SALAZAR,
Defendant.

CRIMINAL CASE NO. 24-00011-004

REPORT AND RECOMMENDATION
re Motion to Sever Charges and
Motion to Dismiss (ECF No. 136)

Pending before the court is defendant Jose Quevedo Salazar's ("Salazar's") Motion to Sever Charges and Motion to Dismiss. *See* Mot. Sever and Dismiss, ECF No. 136. Salazar argues that his defense would be unduly prejudiced if he was tried with the codefendants¹ because Counts 1-7 of the Superseding Indictment do not involve him. *Id.* at 1. Additionally, Salazar seeks dismissal of Counts 8-10 and 12-18 because said counts "do not contain any specific allegations against" him. *Id.* at 2. Having reviewed the parties' filings on the matter and based on relevant case law, the court issues this Report and Recommendation to deny the requests to sever and to dismiss but to grant Salazar's alternative request for a bill of particulars.

I. BACKGROUND

A. Charges

On March 22, 2024, a Complaint was filed in MJ 24-00036 charging brothers Jonovan,

¹ The codefendants are Jonovan Michael Cruz ("Jonovan"), Jeremy Cruz ("Jeremy") and Eric Shaun Cruz ("Eric"). Jonovan, Jeremy and Eric are collectively referred to as the "Cruz brothers."

Jeremy and Eric each with Conspiracy to Distribute Fifty or More Grams of Methamphetamine Hydrochloride, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A)(viii), and Attempted Possession with Intent to Distribute Fifty or More Grams of Methamphetamine Hydrochloride, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A)(viii) and 18 U.S.C. § 2. *See* Compl., ECF No. 1.

On April 10, 2024, the grand jury issued an Indictment charging the three Cruz brothers with the same offenses alleged in the Complaint. *See* Indictment, ECF No. 15.

On June 5, 2024, the grand jury issued a Superseding Indictment against Salazar and the three Cruz brothers. *See* Superseding Indictment, ECF No. 60. The charges in the Superseding Indictment are summarized below:

Count	Offense Description	Defendant(s)
1	Conspiracy to Distribute Fifty or More Grams of Methamphetamine Hydrochloride	Jonovan, Jeremy and Eric
2	Attempted Possession with Intent to Distribute Fifty or More Grams of Methamphetamine Hydrochloride	Jonovan, Jeremy and Eric
3-7	Engaging in Monetary Transactions with Proceeds of Specified Unlawful Activity	Jeremy and Eric
8-13	Engaging in Monetary Transactions with Proceeds of Specified Unlawful Activity	Jeremy, Eric and Salazar
14-18	Engaging in Monetary Transactions with Proceeds of Specified Unlawful Activity	Jonovan, Eric and Salazar
19-33	Engaging in Monetary Transactions with Proceeds of Specified Unlawful Activity	Eric and Salazar
34	Conspiracy to Engage in Monetary Transactions with Proceeds of Specified Unlawful Activity	Jonovan, Jeremy, Eric and Salazar

The money laundering counts naming Salazar as a defendant allege that he and his codefendants engaged in financial transactions with the proceeds of specified unlawful activity, specifically, a conspiracy to distribute drugs, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of said proceeds.

B. Release Conditions

On June 6, 2024, Salazar was arrested in the Eastern District of California. He was

1 temporarily detained, and on June 18, 2024, that court ordered him to be released once a bed became
2 available at Wellspace inpatient facility and to comply with all rules and regulations of the substance
3 abuse treatment program. *See* Rule 5 Documents, ECF No. 113. On June 20, 2024, the court
4 ordered Salazar to remain in the inpatient facility until released by the pretrial services officer and
5 upon completion, to reside at a location approved by the Pretrial Services Office. *Id.*, Am. Special
6 Conditions of Release, ECF No. 113-2.

7 On June 27, 2024, Salazar appeared by Zoom for his arraignment in this district. *See* Mins.,
8 ECF No. 75. The court ordered him released on the same conditions imposed by the Eastern District
9 of California. *Id.*

10 **C. Arrest Warrant and Detention**

11 On July 24, 2024, the probation office filed a Petition for Action on Conditions of Release
12 (the “Violation Petition”), stating that Salazar entered Wellspace on July 2, 2024, and thereafter
13 terminated his participation from the program on or about July 19, 2024. *See* ECF No. 96. The
14 probation officer requested that an arrest warrant be issued.

15 On July 25, 2024, the court granted the request and ordered that a warrant issue for the
16 Salazar’s arrest. *See* Order, ECF No. 98.

17 On September 6, 2024, Salazar appeared by video conference for a status hearing, and the
18 court explained that an arrest warrant was pending. *See* Mins., ECF No. 114. The court ordered him
19 to self-surrender to the marshals in the morning. *Id.*

20 On September 12, 2024, Salazar self-surrendered. *See* Rule 5 Documents, ECF No. 125.
21 He appeared in the Eastern District of California on September 16, 2024, and agreed to be removed
22 to Guam. *See* Commitment to Another District, ECF No. 125-2.

23 On September 30, 2024, Salazar arrived on Guam, and he appeared in court on October 8,
24 2024, to address the allegations in the Violation Petition. *See* Mins., ECF No. 127. Having found
25 that Salazar violated his release conditions and that there was no condition or combination of
26 conditions of release that will assure that he will not flee, the court ordered Salazar detained pending
27 trial. *Id.*

28 Trial is presently scheduled to commence February 19, 2025. *See* Order Granting Mot.

Continue Trial and Related Dates, ECF No. 135.

On November 15, 2024, Salazar filed the instant Motion to Sever Charges and Motion to Dismiss. *See* ECF no. 136. On November 22, 2024, the United States filed an Opposition to the motion. *See* ECF No. 138. Salazar filed an Amended Reply on December 3, 2024. *See* ECF No. 144.

On November 20, 2024, the Chief Judge referred said motion to this court to determine and to issue a report and recommendation. *See* Order, ECF No. 137.

II. DISCUSSION

A. Motion to Sever

Salazar’s motion asserts that only Count 11 and Counts 19-33 specifically mention him “with any particular detail[,]” and Count 34 only mentions him “as being part of a conspiracy generally.” Mot. Sever and Dismiss at 3, ECF No. 136. Salazar argues that because he is not named in Counts 1-7, he will be unduly prejudiced if he were to be tried together with the codefendants on these counts. He claims that the jury will “hear evidence concerning allegations of drug possession and drug distribution,” and the “spillover effect” of such evidence “would risk allowing the jury to impute to . . . Salazar[] guilt based on the alleged drug activities of the codefendant Cruz brothers.” *Id.* at 5-6.

The United States opposes severance and asserts that although Salazar is not named in Counts 1-7, the charges in the Superseding Indictment are “inter-related.” Opp’n at 5, ECF No. 138. The government contends that the charges “are connected with or parts of a common scheme or plan, here to traffic methamphetamine in Guam and to funnel the proceeds of that drug trafficking to the U.S. mainland[.]” *Id.* The United States asserts that “[t]he drug trafficking conspiracy and nearly all of the substantive money laundering transactions took place within [the] same timeframe[.]” so the United States maintains that said charges “were properly joined within the same indictment and a joint trial is appropriate.” *Id.*

1. Legal Standard

Rule 8 of the Federal Rules of Criminal Procedure permits joinder of defendants in the same indictment to promote judicial economy.

1 The indictment or information may charge 2 or more defendants if they are alleged
2 to have participated in the same act or transaction, or in the same series of acts or
3 transactions, constituting an offense or offenses. The defendants may be charged in
one or more counts together or separately. All defendants need not be charged in each
count.

4 Fed. R. Crim. P. 8(b). “There is a preference in the federal system for joint trials of defendants who
5 are indicted together. Joint trials ‘play a vital role in the criminal justice system.’ They promote
6 efficiency and ‘serve the interests of justice by avoiding the scandal and inequity of inconsistent
7 verdicts.” *Zafiro v. United States*, 506 U.S. 534, 537 (1993) (quoting *Richardson v. Marsh*, 481 U.S.
8 200, 209-210 (1987)).

9 Nevertheless, a trial judge has broad discretion to grant or deny severance of joined counts or
10 defendants after balancing the interest in judicial economy against the risk of prejudice to the
11 defendant or the Government. Rule 14 of the Federal Rules of Criminal Procedure provides for
12 relief from prejudicial joinder and states that “[i]f the joinder of offenses or defendants in an
13 indictment, an information, or a consolidation for trial appears to prejudice a defendant or the
14 government, the court may order separate trials of counts, sever the defendants’ trials, or provide any
15 other relief that justice requires.” Fed. R. Crim. P. 14(a).

16 The Supreme Court has stated that a severance is warranted “only if there is a *serious risk* that
17 a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from
18 making a reliable judgment about guilt or innocence.” *Zafiro*, 506 U.S. at 539 (emphasis added).

19 The Ninth Circuit has also stated:

20 The moving party must show more than that a separate trial would have given him a
21 better chance for acquittal. He must also show violation of one of his substantive rights
22 by reason of the joint trial: unavailability of full cross-examination, lack of opportunity
23 to present an individual defense, denial of Sixth Amendment confrontation rights, lack
24 of separate counsel among defendants with conflicting interests, or failure properly to
instruct the jury on the admissibility of evidence as to each defendant. In other words,
the prejudice must have been of such magnitude that the defendant was denied a fair
trial.

25 *United States v. Douglas*, 780 F.2d 1472, 1478 (9th Cir. 1986) (quoting *United States v. Escalante*,
26 637 F.2d 1197, 1201 (9th Cir. 1980)).

27 The Ninth Circuit identified the following factors a court may consider in inquiring into the
28 prejudicial effect of a joint trial:

(1) whether the jury may reasonably be expected to collate and appraise the individual evidence against each defendant; (2) the judge's diligence in instructing the jury on the limited purposes for which certain evidence may be used; (3) whether the nature of the evidence and the legal concepts involved are within the competence of the ordinary juror; and (4) whether [a]ppellants could show, with some particularity, a risk that the joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.

United States v. Fernandez, 388 F.3d 1199, 1241 (9th Cir. 2004), *modified*, 425 F.3d 1248 (9th Cir. 2005). “The first two factors are the most important in this inquiry.” *Id.*

2. Analysis

The court's analysis begins with the four factors identified in *Fernandez*. The first factor requires the court to determine whether the jury may reasonably be expected to compartmentalize the evidence against each defendant. While Salazar is not named as a defendant in the specific money laundering acts alleged in Counts 3-7, the court notes that all four defendants are charged in Count 34 with the overarching money laundering conspiracy. The Ninth Circuit has noted that “a joint trial is particularly appropriate where the codefendants are charged with conspiracy, because the concern for judicial efficiency is less likely to be outweighed by possible prejudice to the defendants when much of the same evidence would be admissible against each of them in separate trials.” *Fernandez*, 388 F.3d at 1242. Thus, with regard to Counts 3-7, it would appear that this first factor does not favor severance of trial.

Additionally, as to the individual money laundering counts, one of the essential elements the government will have to prove beyond a reasonable doubt is that each defendant knew that the property involved in the financial transactions represented the proceeds of specific, separate criminal activity. *See* Ninth Circuit Model Crim. Instr. 18.4. In this case, the Superseding Indictment alleges that the property involved in the money laundering counts were proceeds of a conspiracy to traffic drugs. Thus, despite Salazar's arguments to the contrary, *see* Am. Reply at 3-4, it would appear that evidence of the codefendant's drug activity as charged in Counts 1 and 2 are relevant and admissible as to the money laundering counts. Accordingly, the court finds that the jury can reasonably be expected to evaluate the evidence against each of the defendants independently, especially if the trial judge fashions jury instructions accordingly and is diligent in instructing the jury on the limited

1 purposes for which certain evidence may be used.²

2 The second factor the Ninth Circuit considers is the judge’s diligence in instructing the jury
3 on the limited purposes for which certain evidence may be used. Because the trial has not occurred
4 yet, the court is unable to say that the trial judge has not been diligent in instructing the jury, but the
5 court is confident that the trial court will strive to ensure that the jury is appropriately instructed,
6 including the frequent use of limiting instructions to explain how and against whom certain evidence
7 may be considered. This should reduce or eliminate the possibility of prejudice arising from a joint
8 trial with the Cruz brothers.

9 With regard to the third factor, the Ninth Circuit asks trial court to consider the nature of the
10 evidence and legal concepts involved in the case. Here, the Superseding Indictment essentially
11 alleges two different conspiracies: one involving the three Cruz brothers to distribute
12 methamphetamine hydrochloride, and another agreement involving all the defendants to engage in
13 financial transactions involving drug proceeds in order to conceal or disguise the nature, ownership
14 and control of the drug proceeds. The charged offenses only span a short period of time – from April
15 to October 2023, about seven months. The elements of the offenses and the legal concepts involved
16 in the charges are not too difficult for the jurors to understand if careful and detailed instructions are
17 given. Thus, the third factor does not support Salazar’s request for a severed trial.

18 Finally, the fourth factor considers whether a defendant can show, with some particularity,
19 a risk that a joint trial would compromise a specific trial right or prevent the jury from making a
20 reliable judgment about guilt or innocence. In this case, Salazar has not shown that a specific trial
21 right would be compromised by a joint trial nor has he alleged that his defense is antagonistic to the
22 codefendants. Instead, Salazar asserts that evidence regarding the codefendants’ drug activities will
23 result in a “spillover effect” that would lead the jury to convict him by association. But the Ninth
24 Circuit has stated that “neither a better chance of acquittal in a separate trial nor the mere fact of joint
25 trial with a more culpable defendant is sufficient in itself to require severance.” *Fernandez*, 388 F.3d
26

27 ² See Ninth Circuit Model Crim. Instr. 2.12 (Evidence for Limited Purposes), 6.10 (Activities
28 Not Charged) and 6.13 (Separate Consideration of Multiple Counts – Multiple Defendants).

1 at 1241 (citing *United States v. Baker*, 10 F.3d 1374, 1388 (9th Cir. 1993)).

2 Salazar analogies his situation with the defendants in *United States v. Harrison*, 2021 WL
3 1816895 (S.D. Ohio May 6, 2021), and *United States v. Donaway*, 447 F.2d 940 (9th Cir. 1971).
4 In *Harrison*, the indictment charged Daryl Harrison “with sixteen counts (including conspiracy to
5 commit mail and wire fraud, wire fraud, mail fraud, and witness tampering)” and his step-father
6 Robert Harrison was charged “with just one count of conspiracy to commit wire fraud.” 2021 WL
7 1816895 at *2 (parentheses omitted). The government alleged that the defendants were “involved
8 in a scheme where they made fraudulent statements to investors to acquire funds, then misused those
9 funds for their own personal benefit.” *Id.* Robert Harrison filed a motion to sever, asserting that “he
10 was arguably only tenuously involved in this scheme[,]” that “he received no benefit from being
11 listed on the bank accounts at issue, . . . no evidence suggests he withdrew money from the accounts
12 for his personal use[,]” and that “he did not facilitate conversations with investors and did not
13 communicate with them.” *Id.* The defendant “maintain[ed] that his only connection to this alleged
14 scheme was that the bank accounts at issue were in his name but controlled by his stepson, Daryl.”
15 *Id.* The court found that a joint trial would “result in unnecessary prejudice to Robert Harrison in
16 light of the disparity of evidence and charges between him” and the codefendant. *Id.* The court
17 further held that a joint trial “would lead to the jury hearing substantially more evidence regarding
18 his stepson Daryl Harrison's conduct and would likely result in a spillover effect that would risk
19 allowing the jury to impute to Robert Harrison's guilt based on the alleged misconduct of his
20 stepson[.]” *Id.* Here, unlike *Harrison*, Salazar is charged in twenty-seven of the thirty-four counts
21 alleged in the Superseding Indictment. As discussed above, any risk of a spillover effect is minimal
22 since the evidence of the drug activities involved in Counts 1 and 2 are relevant to the money
23 laundering offenses and conspiracy to commit money laundering charge in Count 34. Furthermore,
24 the trial court’s careful and frequent use of limiting instructions will reduce or eliminate the
25 possibility of prejudice arising from a joint trial.

26 The *Donaway* case involved a ten-count indictment charging Donaway and eight others with
27 interstate transmission of wagering information, transmission in aid of gambling, and conspiracy to
28 violate the federal bribery statute. 447 F.2d at 941. The conspiracy count was dismissed as to all

1 but two defendants, and Donaway was convicted of the two remaining counts. *Id.* On appeal, he
2 argued that his joinder in the indictment was improper and the district court abused its discretion in
3 denying his motion to sever. *Id.* at 942. The scheme in *Donaway* involved “‘fixed’ horse races”
4 where Donaway’s codefendant Swank “was the hub in a wheel of activity” involving five horses.
5 *Id.* Swank

6 had contacts wit[h] horse owners, racetrack employees, trainers and bookmakers and
7 acquired valuable information that made betting at the track’s pari-mutuel windows
8 much too tame for him. He bet instead through off-track bookmakers, including one
Lawler[.] Swank bet so heavily that Lawler protected himself by ‘laying off’ or
spreading all or part of the bets with other bookmakers.

9 *Id.* “The race involving ‘Prize Candy’ drew Donaway and another co-defendant into the picture.
10 In attempting to ‘lay off’ Swank’s bet, Lawler had telephoned Donaway in Philadelphia and the latter
11 placed a \$4,200 bet on the horse[.]” *Id.* This was Donaway’s only connection to the group. *Id.* He
12 “timely objected in a pretrial motion to being joined with eight others and asked for severance” and
13 renewed the motion when the conspiracy count was dismissed, but the trial court denied both
14 motions. *Id.* at 943. On appeal, the Ninth Circuit noted that the government’s case in chief covered
15 more than 2,300 pages of transcript, and less than 50 pages were relevant to Donaway. *Id.* The court
16 stated that “[m]ost of the rest dealt with the other defendants and transactions involving the handling
17 and ‘doping’ of horses, with which Donaway had no connection.” *Id.* The Ninth Circuit found “it
18 impossible to conclude on the facts here that [Donaway] was not severely prejudiced by the evidence
19 relevant only to the co-defendants.” *Id.* The Ninth Circuit held that “[d]espite the trial judge’s
20 sincere effort to keep the jury aware of the limitations in the admissibility of evidence, . . . the failure
21 to sever as to appellant was an abuse of discretion[.]” *Id.* The court at this time cannot conclude that
22 Salazar’s involvement in the scheme to launder drug proceeds is as limited as Donaway’s role in the
23 fixed horse races. As previously stated by the court, Salazar is charged in twenty-seven of the thirty-
24 four counts alleged in the Superseding Indictment. He is alleged to have received drug proceeds on
25 sixteen of the thirty-one counts of money laundering. Even though Salazar is not named as a
26 defendant in the two drug distribution counts, evidence of the drug trafficking activities of the three
27 Cruz brothers is directly relevant to the money laundering charges. There are only two drug
28 trafficking counts but there are thirty-two counts related to money laundering, which does not

1 support Salazar’s argument that “[t]he majority of this case will focus on the alleged drug possession
2 and drug conspiracy of the Cruz brothers and not . . . Salazar.” Am. Reply at 2, ECF No. 144. Based
3 on the information before it, the court finds that the fourth *Fernandez* factor does not support
4 Salazar’s request for a severance.

5 In light of the preference in the federal system for joint trials of defendants who are indicted
6 together, *Zafiro*, 506 U.S., at 537, and because the four *Fernandez* factors do not support a severance
7 of the trial, the below-signed judge recommends that Salazar’s Motion to Sever Counts 1-7 be
8 denied.

9 **B. Motion to Dismiss**

10 Salazar also moves to dismiss Counts 8-10 and Counts 12-18 against him. While the
11 Superseding Indictment charges him with said counts, Salazar argues that the Superseding
12 Indictment “contains no information concerning [his] involvement” in the specific transactions.
13 Mot. Sever and Dismiss at 7, ECF No. 136. In the alternative, Salazar asks the court to order the
14 government to provide a bill of particulars to “provide specific allegations of [his] conduct that
15 would prove he is involved or otherwise culpable for these counts.”

16 The United States opposes the motion and asserts that dismissal is not warranted since the
17 Superseding Indictment contains a concise statement of the charges, including all necessary elements
18 of the crimes charged.

19 **1. Legal Standard**

20 Federal Rule of Criminal Procedure 12(b)(3) governs a motion to dismiss an information or
21 indictment for failure to state an offense. *United States v. Boren*, 278 F.3d 911, 914 (9th Cir. 2002).
22 The rule specifies which motions must be made before trial and includes a motion to dismiss because
23 the indictment or information fails to state an offense. *See* Fed. R. Crim. P. 12(b)(93)(B)(v). To
24 withstand a 12(b)(3) motion, an indictment must allege that the defendant performed acts that, if
25 proven, would constitute a violation of the law under which he has been charged. *Boren*, 278 F.3d
26 at 914.

27 Under Federal Rules of Criminal Procedure 7, an information is sufficient if it is “a plain,
28 concise, and definite written statement of the essential facts constituting the offense charged.” Fed.

1 R. Crim. P. 7(c)(1). For the purpose of analyzing a 12(b)(3) motion, the court must accept the
2 allegations in the indictment or information as true. *Boren* at 914. In ruling on a pretrial motion to
3 dismiss, “the district court is bound by the four corners of the [charging document].” *United States*
4 *v. Lyle*, 742 F.3d 434, 436 (9th Cir. 2014). The court “cannot consider evidence that does not appear
5 on the face of the indictment.” *United States v. Kelly*, 874 F.3d 1037, 1046 (9th Cir. 2017) (citing
6 *Lyle*, 742 F.3d at 436).

7 2. Analysis

8 In this case, Counts 8-10 and 12-13 of the Superseding Indictment charge Salazar, Jeremy
9 and Eric with Engaging in Monetary Transactions with Proceeds of Specified Unlawful Activity, in
10 violation of 18 U.S.C. §§ 1956(a)(1)(B)(i), 1961(1) and 2. Similarly, Counts 14-18 of the
11 Superseding Indictment charge Salazar, Jonovan and Eric with Engaging in Monetary Transactions
12 with Proceeds of Specified Unlawful Activity, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i), 1961(1)
13 and 2. The essential elements of these counts require the United States to prove that (1) the
14 defendant conducted a financial transaction involving property that represented the proceeds of a
15 conspiracy to distribute methamphetamine hydrochloride; (2) the defendant knew that the property
16 represented the proceeds of some form of unlawful activity; and (3) the defendant knew that the
17 transaction was designed in whole or part to conceal or disguise the nature, location, source,
18 ownership and control of the proceeds. *See* Ninth Circuit Model Crim. Instr. 18.4. (Laundering or
19 Attempting to Launder Monetary Instruments). The Superseding Indictment contains sufficient
20 information on its face to satisfy the requirement of Rule 7 that it be “a plain, concise, and definite
21 written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c)(1).

22 The United States notes that while the Superseding Indictment does not identify Salazar as
23 either the sender or receiver of the funds involved in the financial transactions in said counts, the
24 Superseding Indictment specifically cites to 18 U.S.C. § 2, which gives Salazar notice that he can
25 be held liable as a principal for the money laundering offenses if he “aids, abets, counsels,
26 commands, induces or procures its commission.” 18 U.S.C. § 2. The court concurs and concludes
27 that the Superseding Indictment adequately states money laundering offenses against Salazar in
28 Counts 8-10 and Counts 12-18. Accordingly, the court recommends that Salazar’s Motion to

Dismiss said counts be denied.

3. Alternative Request for Bill of Particulars

In the alternative to dismissal, Salazar requests the court order the government to file a bill of particulars. The Ninth Circuit has explained that a bill of particulars serves three functions: (1) to inform a defendant of the nature of the charges against him to enable him to prepare for trial; (2) to avoid or minimize the danger of surprise at trial, and (3) to protect against double jeopardy. *Id.* The test for granting of a bill of particulars is whether the indictment is so vague that a bill of particulars is required. *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979). “In determining if a bill of particulars should be ordered . . . , a court should consider whether the defendant has been advised adequately of the charges through the indictment and all other disclosures made by the government. Full discovery will obviate the need for a bill of particulars.” *Long*, 706 F.2d at 1054.

In this case, the government asserts that the discovery provided to Salazar’s counsel “makes it abundantly clear . . . how the[] individuals and . . . transactions [alleged in said counts] relate to . . . Salazar.” Opp’n at 7, ECF No. 138. Aside from this blanket statement, the government’s Opposition has not explained how Salazar aided and abetted in said transactions or where specifically in the voluminous discovery is the information regarding Salazar’s relationship to these transactions so that Salazar and his counsel can meaningfully prepare for trial. The court notes that Counts 11 and 19-33 specifically identify Salazar as the recipient of the funds involved in the financial transactions and the sender is identified as one of the Cruz brothers. However, it is not clear from the face of the Superseding Indictment how Salazar’s conduct relates to the financial transactions alleged in Counts 8-10 and Counts 12-18, where neither the senders or receivers of the proceeds in said counts are either Salazar or one of the Cruz brothers. Salazar asserts he “is left guessing as to his alleged involvement, if any.” Am. Reply at 5, ECF No. 144.

The court agrees with Salazar. While the Superseding Indictment is sufficient to withstand a Rule 12(b)(3) motion to dismiss, the government’s references to “18 U.S.C. § 2” and the “discovery provided” are insufficient to enable Salazar and his counsel to adequately prepare for trial and minimize the danger of surprise at trial. Accordingly, the court recommends that the trial judge grant Salazar’s alternative request and order the United States to file a bill of particulars that either

explains how Salazar aided, abetted, counseled, commanded, induced or procured the commission of the money laundering transactions in Counts 8-10 and Counts 12-18 or references specific pages of the discovery that furnishes said information.

III. RECOMMENDATION

The court recommends that Salazar's requests to sever charges and dismiss certain counts be denied. Because a joint trial promotes judicial efficiency and economy and will not result in unnecessary prejudice to Salazar, the court recommends that his Motion to Sever be denied. Additionally, although Salazar is not specifically identified as being the person who physically engaged in the asserted financial transaction in Counts 8-10 and Counts 12-18, he nonetheless may be held liable as an aider and abettor in said money laundering transactions as alleged in the Superseding Indictment. Accordingly, said counts of the Superseding Indictment should not be dismissed as to him. Finally, because the allegations in Counts 8-10 and Counts 12-18 of the Superseding Indictment lack sufficient detail to enable Salazar and his counsel to adequately prepare for trial and minimize the danger of surprise at trial, the court recommends that the trial judge grant Salazar's alternative request for a bill of particulars.

IT IS SO RECOMMENDED.



/s/ Michael J. Bordallo
U.S. Magistrate Judge
Dated: Jan 07, 2025

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).